That's particularly the case here where there truly are extremely difficult negotiations that the debtors must go through. And I believe that it is important for the debtors to be fortified in those negotiations by the views of key constituencies. I believe that has occurred with regard to the Creditors' Committee, as is reflected, I believe, by the constructive relationship between the Creditors' Committee and the debtors that I've viewed in this case. I say "constructive," rather than "hand-in-glove" because it is very clear to me that the Creditors' Committee is nobody's patsy by any means and makes its views known to the debtor very clearly and forcefully, even if those views are unwelcome.

It's not particularly clear to me that that same voice has been expressed by the shareholders. Partly, that is the fault of the shareholders, at least the sophisticated ones. For example, I am shocked that Appaloosa made this motion and sent the threatening letter to the board that it sent asserting the allegations that it made without once communicating with the debtor. And I'll return to that later.

But Appaloosa, as Mr. Lauria stated, should not really be the focus of a motion to appoint an official equity committee, although Appaloosa's problems may be the focus of who the U.S. Trustee appoints to a committee.

Now Appaloosa also alleges that there are actual

conflicts over and above the debtor's tendency in a very large and difficult case not to reach out to a constituency that has not reached out to it. Again, I have a hard time seeing that. I certainly do not see a level of actual conflict at the level alleged by Appaloosa in what I again believe was irresponsibly loose language.

There are really two bases for Appaloosa's allegation.

The first is that because at the start of these cases the debtors proposed what I feel free in calling a generous KECP package that included an allocation of post-reorganization equity to post-reorganization management,the debtors' management--and to the extent the board approved the KECP, the board--believes that management's interests are different than shareholder interests. I note, however, and this, frankly, was obvious to Appaloosa, or at least should have been, that that motion has been repeatedly adjourned and tabled pending further negotiations with the creditors committee, which as I said is nobody's patsy, and secondly, is subject ultimately to my approval.

I also note that, traditionally, provisions for allocation of post-reorganization equity for management are dealt with in a plan that is voted upon by those entitled to vote, and, generally, that is done because those entitled to vote then see how they're being diluted. Generally,

notwithstanding some cases where shareholders recover something in respect of their old equity, the major issuance of post-reorganization equity in chapter 11 cases goes to the creditors, and they are the ones who are usually most diluted by such management incentive plans in respect of post-reorganization equity. In other words, I believe Appaloosa's argument on this point is miscast and at best irrelevant and I believe, again, almost willfully so.

Secondly, Appaloosa argues that the debtors' very opposition to this motion shows that the debtors' management and board have an actual conflict in representing the interests of the shareholders, primarily because the debtors have stated that for purposes of this motion, at this time, they are clearly or hopelessly insolvent. The debtors' objection to the motion, to the contrary, is clearly in good faith. As Mr. Sheehan and Mr. Resnick testififed, the debtors' goal is to maximize value for all constituencies. I might understand why an unsophisticated shareholder who did not understand the limited issues and inquiries relevant to a motion under section 1102(a)(2) might make the argument, but, knowing Appaloosa's sophistication, I find this "actual conflict" argument to be rhetoric.

As to the timing factor, because of the very serious issues that the debtors are dealing with in these cases, going to the heart of their business, this is to me obviously

not a simple balance sheet restructuring where the capital structure simply needs to be adjusted because there's too much funded debt on the books.

There are serious -- to use the debtors' phrase "transformational issues" that have to be resolved here. Because of that, I believe that this is the appropriate time to move for an equity committee, and not to wait until later in the day when a plan is actually being negotiated.

I also believe as a corollary to that, the function of the equity committee and the makeup of its professional advisors should be reflected by this timing. As I'll say later, again, I think this leads to the conclusion that although it's not before me, except in my need to weigh the cost of an equity committee's appointment, that it's unlikely that I would approve the retention of investment bankers and accountants or even actuaries at this time for an equity committee, since those functions are not really the functions that need to be performed at this time by an equity committee.

So that in contrast, while in the Loral case I believe that it was incumbent to have an equity committee, if at all, towards the end of the case, here, I believe if it is incumbent on there being an equity committee, this is the time to have one formed.

It is even conceivable to me that if I did form an

equity committee now and it turned out that ultimately I approved interim transformational solutions -- transformational solutions to the labor and related pension and GM problems that the debtors face--it might be appropriate to disband the equity committee because, in light of those solutions, it might appear clearly at that time that the debtor was hopelessly insolvent or at least that it was likely that there would be no distribution to shareholders.

But because of the importance of those pending issues, one could at least see a rationale for having an equity committee with counsel in the near future to deal at least with those transformational issues on behalf of the shareholders.

Now, as far as whether the debtor is insolvent or hopelessly insolvent or there is a likelihood of a meaningful distribution to shareholders, I am at this time on this record frankly skeptical that there will be a meaningful distribution, but I'm not prepared to rule it out. I say that for a number of reasons.

First of all, it's undisputed that on a balance-sheet basis, and it is correct that the movants' experts did not disagree that on a balance sheet basis, the debtors' operating -- most recent operating numbers comply with GAAP, there is roughly a 6.3-billion-dollar hole, or insolvency.

The question, obviously, is how does one fill that

hole or bridge that gap?

Although Appaloosa's experts made some effort to do it on the asset side, my review of their analysis is that they have not in any meaningful respect convinced me on the asset side of the balance sheet or in their going-concern value, their enterprise value before deductions, that they have -- they have established a credible case to do so.

When you really boil it down, giving the benefit of the doubt to why and how the admitted one-billion-two-dollar -- two-hundred-million-dollar error was corrected by Eureka, what Eureka did was essentially look at the debtors' 2005 actual performance and annualize the debtors' actual performance for the first 115 days of 2006 for an EBITDA figure that they then multiplied by two different multiples.

I believe Mr. Sheehan's testimony as to why, particularly in respect of the annualization of the first quarter of 2006, Eureka's process was materially if not perhaps fatally flawed, in respect of the Eureka expert's analysis of why the debtors did better in the first quarter of 2006 and what the debtors' properly projected earnings should be.

Clearly, to me, Mr. Sheehan's explanation of the debtors' analysis of their projected business with GM and the reason for the potential front-loading of income in 2006 was credible and accounted for the difference between the

bcttoms-up projections that the debtors did and the effectively back-of-the-envelope calculation that Eureka did in respect of EBITDA, and I say "back of the envelope" because, frankly, given the billion-two error on its March 10th report, that's all Eureka was really left with: applying a multiple to 2005 and the first quarter actual numbers of 2006 without proper analysis of why those figures can be relied upon as the basis for projected EBITDA.

I do recognize, however, that Mr. Sheehan acknowledged that it is possible that the debtor's balance-sheet numbers on the asset side might be higher. It's my experience, and I think most people's experience who've dealt with Chapter 11 debtors for a lengthy period, that that's hardly ever the case. Almost invariably, the balance sheet overstates the assets, but that's Mr. Sheehan's belief, and he has clearly been through an intensive analysis of the business on a bottoms-up basis and I accept his statement.

Now, on the balance sheet liability side, which is most -- where most of the dispute arises, I've considered the testimony of Messrs. Reese and Williams. And, frankly, I believe that it's very hard on the record to find any exact number as far as what would be the appropriate net savings in respect of OPEB liabilities after the debtors resolve their transformational issues.

Clearly, Appaloosa's argument that the OPEB

liabilities go away because the collective bargaining agreements go away in 2007 is -- well, it's almost laughable. The unions aren't going away, and the employees aren't going away without being paid for giving up those rights or having them reinstated in some form.

So all the parties recognize that there is a price to resolve those liabilities, including Appaloosa. The issue is how much of a price has to be paid and how much of a savings can the debtors generate. I find it hard to believe that despite all of their efforts and all of an equity committee's efforts, there will be a material recovery for shareholders in light of those OPEB negotiations, but the company doesn't preclude it as a possibility. There are scenarios in which it could occur. That's agreed to by both sides in this proceeding.

And, therefore, while Eureka's March 10th report, as corrected for the billion-two error, still shows on even the most optimistic basis a two-hundred-and-thirty-four-million-dollar insolvency hole, given the huge amounts at stake here in respect of the labor negotiations--and we're talking about potential savings of billions of dollars, I know it's hard to believe it, but $234 million may not be that big of a gap, at least on today's record.

I also looked, of course, as Judge Lifland did and Judge Hillman did and other courts have done in connection

with motions under 1102(a)(2), at the trading prices of the debtors' securities when evaluating the debtors' solvency.

It's common knowledge that the market in distressed debt and to some extent distressed stock, but more -- more the case of distressed debt, is large, indeed, huge, and active, particularly with respect to public companies such as Delphi. That is reflected among other things by the numerous Wall Street analysts' reports covering the debt introduced here.

There's uncontroverted evidence that Delphi's public debt has consistently traded since the petition date at or below sixty cents on the dollar. The courts at times have, although not accepting as controlling the trading prices of debt securities, consistently looked at trading prices in the debtors' securities as a indication in this type of summary proceeding of value.

Courts obviously know, at least this Court knows, that people engage in a market because they're making various bets on the value of securities. Some are betting that it's a good idea to sell, and some are betting it's a good idea to buy. Generally, it's an active market; and, generally, active markets are a good indication of value because there are both buyers and sellers at reasonably arm's length bargaining positions.

However, of course, those markets are not guarantees

of value. That's why some analysts get fired and some get promoted. Market security trading price indicators are most telling where they're quite low, where they're in my experience below or well below fifty cents on the dollar, particularly in respect of cases that are in all likelihood going to be resolved one way or another in a fairly short term, and, in the life of a chapter 11 case of a large company, fairly short term is around a year.

It's clear to me and it's been clear from the start of these cases that although the debtors are pushing these cases, appropriately so, as fast as they can, this is a longer term process. They project emergence from bankruptcy in 2007, although they are doing everything they can to emerge sooner than that.

Given that, I am not particularly moved either way by the trading ratios or prices. Mr. Lauria is correct that anyone buying distressed debt is looking for a large return to make up for the risk, particularly where the debt is unsecured, and so it's conceivable that a sixty-percent-on-the-dollar level, while obviously not suggesting solvency, may indicate at least a hope of solvency.

This is, for example, different than the trading levels in Loral, which were considerably lower, or in Williams, which were at 15% to 6% of face value.

So, all things considered, in respect of the

solvency analysis, at this point in the case, I cannot find that appointing an equity committee would be a gift. On the other hand, I am very mindful of the cost to these estates of an equity committee.

Some cost clearly is legitimate. The whole reason you have an equity committee is that the estate bears the cost. On the other hand, the way that this litigation has been conducted, I mean this litigation in front of me right now, by Appaloosa, gives me very serious pause as to whether the cost ultimately will be appropriate in this case.

Now, Appaloosa says I can regulate that by looking at fee applications and the like, but, to some extent, once an equity committee is appointed the cat is out of the bag, and so I have thought very long and hard about whether the cost factor here should lead me not to appoint a committee.

I can say this, that I will look very carefully at fee applications of any counsel that is chosen to represent a committee. I also will look very carefully at whether the continued incurrence of fees is appropriate at various stages in the case where the picture on valuation becomes clearer.

But, ultimately, standing alone, as I do believe that I can perhaps with the help of the United States Trustee control costs, the costs alone are not in my mind dispositive, although they are a major factor here calling -- arguing that I should not appoint a committee.

The last point which is raised by some courts, it's specifically raised by Judge Case in the Northwestern opinion, is that at least Appaloosa went into this bankruptcy case with its eyes wide open. Judge Case thought that was a clear factor calling for denial of the motion. And of course the ability of certain shareholders to fund their own professionals also is clearly a factor arguing against a committee. See Williams, 281 B.R. at 223.

If this were a relatively small pool of shareholders, I would -- I would obviously do the same. I don't think the fact that Brandes has joined in the motion particularly helps Appaloosa's cause, because Brandes is obviously very well-heeled, very sophisticated and is well represented by another large national firm with a bankruptcy practice.

However, I go back to the first point I made. There are over 300,000 shareholders here. Given the rapid change in their fortunes from June of 2005 to today, it's fair for me, I think, to assume that some of them may be in the investor equivalent of a state of shock or disbelief and that that's why they're not showing up here today.

It seems to me, again, that given the important transformative events that will be taking place in this company through this bankruptcy case over the next few months, it's important to give those people representation,

and if a committee is formed that adequately represents them, then I think that they're entitled to it within the parameters that I've already described.

Now, in discussing or mentioning the abrupt changes that have taken place in the fortunes of this company, I do not want to suggest, as Appaloosa, I think, has, that the company has done something over the last several months between June of 2005 and today or even between June of 2005 and October when it filed for bankruptcy that is somehow nefarious or improper in respect of its business or its shareholders.

I think it's irresponsible to suggest that. Clearly, this company has extremely difficult problems to resolve. To suggest that it should have spent all of its cash on hand before filing to resolve those problems, to suggest that it should continue with the steady-state projections, which even Appaloosa recognized would lead to the destruction of the debtors' business is absurd and was truly a waste of this Court's time, and, frankly, for those who are not particularly sophisticated and read such allegations in the press, again, Appaloosa's argument or insinuation in this regard was a truly irresponsible attack on the company.

So I will order the appointment of an official equity committee. I'm going to be very clear as to the -- my

expectation as to at least the -- my initial reaction to a request by that committee for retention of professionals.

I do not believe that the proper functioning of a committee of equityholders at this time calls for the appointment and retention of investment bankers, accountants or actuaries, and a premise -- a fundamental premise of my ruling is that I would not appoint such parties, professionals at this time.

What an equity committee needs to do is to understand through its own members' expertise, and I trust that there will be sophisticated parties like Brandes on the committee, and through the assistance of its counsel, the pressing issues of this case in respect of labor, pension, other benefits and GM.

It needs to be informed, it needs to give the debtor its views so that they can be taken into account as the debtor proceeds.

To the extent that it feels it needs to do due diligence on actuarial assumptions, I believe an appropriate arrangement can be worked out with regard to using the creditors committee's actuaries.

I do not expect an equity committee or its professionals to try to inject themselves into the extremely sensitive negotiations that are ongoing between the debtors, the unions, GM and other parties in the labor transformation

issue process.

They should be able, however, again, to communicate their views to the debtor and be able to be reasonably informed as to the process so that they can make a determination as to whether to oppose or support it whenever an agreement is brought to the Court.

It's very clear that one function of a committee may require the committee at times to take an adversarial role in a case. However, I believe that consistent with all the case law that I've just cited, it is not proper for an equity committee to view its job as one to create leverage by being a thorn in everyone's side.

If the equity committee is not engaged in a two-way dialogue with the debtor, I will believe, and I will act on a motion that contends that, the committee is dysfunctional and disband it.

I will also look very closely, and I know that the United States Trustee will look very closely, at any suggestion that the equity committee is taking action in court or otherwise not to maximize recoveries for all committee constituents, but instead to artificially pump up the value of the current stock on a trading basis.

I am very concerned about the potential that that has already happened in this case--not by an official committee and obviously not by an equity committee, because

one has not been appointed, but by parties involved in this litigation, and I will look at the facts closely, and I've already looked closely at the facts of the apparent release of confidential information.

And, having looked at those facts, I continue to have serious questions about that apparent release, and if, in fact, Appaloosa applies to be a member of this committee, I direct the U.S. Trustee to investigate those facts.

In short, the equity committee needs to be responsible in looking after the interests of the equity-holders as a group, and I trust it will do so.

So, Mr. Lauria, you can submit an order to that effect.

COUNSEL: Thank you, Your Honor. Thank you, Your Honor.

THE COURT: Thank you.

(Proceedings concluded at 7:17 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability, except where, as indicated, the Court has modified its bench ruling.

March 23, 2006

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